



NORFOLK SOUTHERN

Norfolk Southern Corporation
Law Department
8 North Jefferson Street
Roanoke, Virginia 24042-0041
703 981-5119

Kathleen Fenton Jessee
Solicitor

RECORDATION NO. **1 5427** December 17, 1987

DEC 23 1987 - 10 12 AM 7-357A030

PUROLATOR

INTERSTATE COMMERCE COMMISSION
Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Attention: Mail Room - Room No.: 1324
12th and Constitution Ave., N.W.
Washington, D.C. 20423

No. ~~100-100000~~
Date **DEC 23 1987**
Fee \$ **10.00**
ICC Washington, D.C.

Temporary Use Agreement dated December 1, 1987
Between Bethlehem Steel Corporation and
Norfolk and Western Railway Company

Dear Ms. McGee:

In accordance with § 11303 and the Commission's rules, I submit herewith for recording with the Commission four (4) original counterparts described below. I request that three of the counterparts be returned to the undersigned.

(1) This document is a Temporary Use Agreement dated as of December 1, 1987, between Bethlehem Steel Corporation and Norfolk and Western Railway Company.

(2) This document is a "primary document" under 49 C.F.R. § 1177.1.

(3) The equipment covered by this document is generally described as follows:

| <u>Number of Units</u> | <u>General Description</u> | <u>Identifying Numbers (both inclusive)</u> |
|----------------------------|--|---|
| 499 | 3000 Cubic Foot, 100-ton Covered Hopper Cars | NW 182501-182999 |

Each unit of equipment will be marked in letters not less than one inch in height with the words:

**OWNERSHIP SUBJECT OF A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION**

Dec 23 10 42 AM '87
ICC OFFICE OF THE SECRETARY
MOBILE OVERHAUL UNIT

Ms. Noreta R. McGee

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December 17, 1987

or with appropriate words of similar import.

(4) The names and addresses of the parties executing the Temporary Use Agreement are as follows:

BAILOR: Bethlehem Steel Corporation
Martin Tower
Bethlehem, Pennsylvania 18016

BAILEE: Norfolk and Western Railway Compan
8 North Jefferson Street
Roanoke, Virginia 24042

(5) After recordation, please return three original counterparts of the document stamped with the Commission's recordation data, to the undersigned at Norfolk Southern Corporation, 8 North Jefferson Street, Roanoke, Virginia 24042.

(6) The recordation fee of \$10.00 is enclosed.

(7) A short summary of the Temporary Use Agreement for inclusion in the index follows:

This is a Temporary Use Agreement dated as of December 1, 1987, between Bethlehem Steel Corporation, Martin Tower, Bethlehem, Pennsylvania, as Bailor, and Norfolk and Western Railway Company, 8 North Jefferson Street, Roanoke, Virginia, as Bailee, and covering 499 covered hopper cars, numbered NW 182501-182999, inclusive.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,

Kathleen Fenton Jessee
Kathleen Fenton Jessee

KFJ/mp

Enclosures

IN DUPLICATE

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Kathleen Fenton Jessee
Norfolk Southern Corp.
8 North Jefferson Street
Roanoke, VA 24042

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/23/87 at 10:50AM, and assigned recordation number(s). 15427

Sincerely yours,

Nesta L. McEwen
Secretary

Enclosure(s)

TEMPORARY USE AGREEMENT

1 65427

REGISTRATION NO. _____ Filed 1425

DEC 23 1987 - 10 10 AM

INTERSTATE COMMERCE COMMISSION

Dated as of December 1, 1987

between

BETHLEHEM STEEL CORPORATION

and

NORFOLK AND WESTERN RAILWAY COMPANY

Executed in six Counterparts of
which this is Counterpart No.

THIS AGREEMENT, dated as of December 1, 1987, by and between BETHLEHEM STEEL CORPORATION, a Delaware corporation (the "Vendor"), and NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation (the "Railroad")

W I T N E S S E T H:

THAT

WHEREAS, Railroad desires to acquire 499 new 3000 cubic foot, 100 ton covered hopper cars, to bear Railroad's road numbers NW 182501 through 182999, both inclusive, such cars being hereinafter collectively called the "Units"; and

WHEREAS, Railroad and Vendor have contracted for the purchase and sale of the Units; and

WHEREAS, the Vendor is to deliver the Units to Railroad at Johnstown, Pennsylvania, freight charges, if any, prepaid; and

WHEREAS, inasmuch as Railroad has not yet consummated financing arrangements for the acquisition of the Units and therefore, in the absence of this agreement is not in a position to accept delivery of the Units at this time; and

WHEREAS, Railroad anticipates that the above-described financing arrangements, (the "Financing") will be consummated on or before May 31, 1988, and Railroad, in order that it may take possession of and use the Units pending completion of such Financing has requested Vendor to grant Railroad temporary possession of and the right to use the Units pursuant to the terms of this Agreement; and

WHEREAS, Vendor is willing to grant such right to use the Units upon the terms and conditions hereinafter stated;

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. Vendor hereby agrees to deliver physical possession of the Units to the Railroad at Vendor's place of business in Johnstown, Pennsylvania. The rights of Railroad hereunder in respect of each Unit shall commence on the date of acceptance of such Unit from the Vendor (the "Acceptance") and end on the earlier of May 31, 1988, or the date of payment of the purchase price of such Unit by Railroad, or by its designee, or by a Trustee under the Financing (the "Closing"). Railroad shall purchase such accepted Units from Vendor or provide a purchaser therefor on or before May 31, 1988, and Vendor shall sell such

Units to Railroad or such purchaser as Railroad may provide, at the total purchase prices as set in the Purchase Order as it relates to such Units, and the obligation of each so to do shall be absolute, regardless of the condition of such Units at the time of Closing. On Acceptance, Railroad will assume the responsibility and risk of loss with respect to such Unit and will deliver to Vendor a Certificate of Inspection and Acceptance substantially in the form attached hereto as Exhibit A (the "Certificate of Inspection and Acceptance"). On Acceptance, the Vendor's warranty will commence.

2. Title to the Units shall remain in Vendor until Closing and Railroad's right and interest therein is and shall be solely that of temporary possession, custody, and use under this Agreement. The Railroad or any third party acquiring an interest in the Units by reason of the Financing shall not by virtue of this Agreement or the temporary possession and use of the Units by the Railroad under or pursuant to this Agreement or of anything permitted to be done by the Railroad hereunder in respect of the Units, acquire any title to or ownership of the Units, or any portion thereof, and title to or ownership of the Units shall remain solely in the Vendor until Closing. Transfer of title to any Unit to the Railroad or to any purchaser provided by the Railroad shall be effected only at the Closing by delivery by the Vendor of a bill of sale to the Railroad or to such purchaser. When the purchase price of any Unit has been paid in full to Vendor and Vendor has delivered an appropriate bill of sale and returned or applied any related security deposit as hereinafter provided, this Agreement shall automatically be terminated with respect to such Unit without further action by or notice to any party concerned. Prior to delivery of any Unit, Railroad shall do such acts as may be required by law, or reasonably requested by Vendor, for the protection of Vendor's title to and interest in the Units, including, without limitation, recording at Railroad's expense a fully signed counterpart of this agreement with the Interstate Commerce Commission, with the corresponding offices in Canada if any of the Units will be used in Canada and wherever else necessary to protect the Vendor's interest.

3. This Agreement is a financial arrangement, under which Railroad will have temporary possession, custody, and use of the Units to be purchased from Vendor, and the risk of loss of the Units after Acceptance is on the Railroad. At the time of delivery of the Units, the Railroad shall be entitled, as between Railroad and Vendor, to claim the Accelerated Cost Recovery deduction under Section 168 of the Internal Revenue Code of 1986, and the Vendor agrees that it shall not be entitled to claim any portion of such deduction.

4. Any security deposits advanced to the Vendor by or on behalf of the Railroad to secure payment of the purchase price of the Units and the performance by Railroad hereunder may be retained and used by Vendor until payment of the purchase price is made, and such deposits shall, at the election of the

Railroad, either be applied toward payment of the purchase price or be returned to the Railroad at the time such payment is made.

5. Railroad will deposit or cause to be deposited with the Vendor pursuant to the Vendor's instructions an amount which (together with amounts theretofore deposited or caused to be deposited by Railroad with Vendor) shall equal the purchase price of the Units to be delivered hereunder. These deposits will constitute security deposits securing the Railroad's performance hereunder and the ultimate payment of the purchase price upon transfer of title to the Units. Upon default by the Railroad in making such deposits, or upon default by Railroad in performing any other term of this Agreement, Vendor, without demand or notice, may, but shall not be obligated to, apply such deposits to the payment of the purchase price of unpurchased Units and may terminate performance of this Agreement. Such security deposits in respect of the Units will be made not later than ten days after the date of receipt by Railroad of Vendor's invoice for the Unit(s). Such invoice shall be delivered to Railroad weekly, covering the Units for which the Railroad has issued a Certificate of Acceptance during the previous week.

6. Railroad agrees that it will permit no liens of any kind to attach to the Units, and that it will (a) indemnify and save harmless Vendor from and against all claims, expenses, or liabilities of whatsoever kind (except claims or liabilities based on or arising out of any breach of warranty or any defect in the Units for which Vendor is responsible), arising out of retention by Vendor of title to the Units or out of the temporary possession, use and operation thereof by Railroad during the period when title thereto remains in Vendor, and (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Units or the Vendor because of its ownership or because of the use, marking, operation, management or handling of the Units by Railroad while title to such Units remains in Vendor pursuant to this Agreement.

7. Railroad will, at its own expense, keep and maintain the Units in good order and running condition and will, at its option, repair or replace or promptly pay to Vendor the purchase price in cash of those Units which may be damaged or destroyed by any cause during the term that this Agreement applies to such Units (in which event title to such Unit shall pass automatically to Railroad). Railroad shall not change the design, construction or specifications of any Unit, or any part thereof, without the prior approval of the Vendor. Railroad shall maintain, use and operate the Units in compliance with all applicable laws, rules and regulations.

8. Prior to the delivery of any Unit to Railroad it will be numbered with its appropriate road number; in addition, there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Railroad upon each side of each

Unit in letters not less than one inch in height the following words:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION.

Railroad may also cause the Units to be lettered with the name, initials or insignia of Railroad or any affiliate of Railroad or in such other ways as are appropriate for convenience of identification of the interest of the Railroad therein, but no numbers shall be placed on the Units other than those specified in the first "Whereas" clause of this Agreement.

9. Vendor shall have the right to assign its rights under this Agreement pursuant to the Financing.

10. Subject to this Agreement and the rights of Vendor hereunder, and without releasing Railroad from any of its obligations hereunder, Railroad shall have the right to assign or transfer its rights hereunder, or in particular Units hereunder, to any affiliate of Railroad.

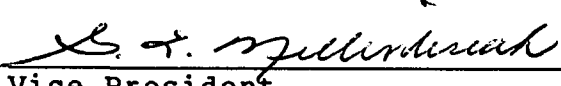
11. The Vendor agrees that, upon receipt of all payments to be made or caused to be made to it by the Railroad under this Agreement, it shall upon request execute and deliver to or upon the order of Railroad bills of sale for the Units in customary form with full warranty of title, free and clear of all liens and encumbrances created by, under, or through the Vendor.

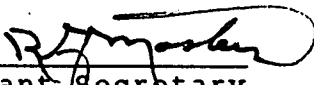
12. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the Vendor and the Railroad have caused this instrument to be signed and acknowledged by their proper officers and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

BETHLEHEM STEEL CORPORATION
By

L.S.
ATTEST:


Sr. Vice President


Assistant Secretary

NORFOLK AND WESTERN RAILWAY COMPANY
By

L.S.
ATTEST:


Assistant Secretary


Vice President

COMMONWEALTH OF PENNSYLVANIA)

) ss:

COUNTY OF LEHIGH)

On this 15th day of December, 1987, before me personally appeared B. L. Millerbruch, to me personally known, who, being by me duly sworn, says that he is a ^{Sr.}Vice President of BETHLEHEM STEEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. H. H. Vary
Notary Public

My commission expires: July 17, 1990.

COMMONWEALTH OF VIRGINIA)

) ss:

CITY OF NORFOLK)

On this 14th day of December, 1987, before me personally appeared R. A. Brogan, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORFOLK AND WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joyce F. Rhodes
Notary Public

My commission expires: July 13, 1991

CERTIFICATE OF INSPECTION AND ACCEPTANCE

The undersigned, a duly authorized representative of Norfolk and Western Railway Company (the "Railroad"), for the purpose of inspecting equipment that is to become subject to a Temporary Use Agreement dated December 1, 1987, between the Railroad and Bethlehem Steel Corporation (the "Equipment Agreement"), and which is ultimately to become subject to permanent financing arrangements of the Railroad, hereby certifies that the following described unit or units of railroad equipment (the "Equipment"):

Description: 100-ton, 3000 cu. ft. Covered Hopper Cars

Manufacturer: Bethlehem Steel Corporation

Quantity:

Road Numbers:

Delivered at:

(i) appear to be in good order and condition, (ii) appear to have been completed in accordance with the requirements and provisions of the Equipment Agreement and (iii) have been delivered to and have been inspected and accepted on behalf of the Railroad pursuant to the Equipment Agreement as of the date indicated below.

The undersigned further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment the following legend, in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED
WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this certificate shall not in any way reduce, limit, alter or affect the Railroad's right to pursue any claim, in warranty or otherwise, against the Manufacturer of the Equipment for any defect, whether latent or patent.

Authorized Representative of
Norfolk and Western Railway Company

Dated: